IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1024 of 2001
with
SPECIAL CIVIL APPLICATION No 1343 of 2001
with
SPECIAL CIVIL APPLICATION No 10164 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : 1 & 2 YES; 3 to 5 NO

JAGDISH M VYAS & OTHERS
Versus
DENA BANK & BANK OF BARODA

Appearance:
1. Special Civil Application No. 1024 of 2001
MR GIRISH PATEL for MR AY KOGJE for Petitioner
MR KM PATEL for Respondent
2. Special Civil Application No. 1343 of 2001
MS PARUL P VASAVADA for Petitioner
MR KM PATEL for Respondent
3. Special Civil Application No.10164 of 2001
MR SHALIN MEHTA with MR GIRISH PATEL for petitioner
MR DARSHAN M PARIKH for Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/05/2002

C.A.V. JUDGEMENT

1. These petitions involve a common question of law regarding withdrawal of application made under the voluntary retirement scheme and the petitions having been argued and heard together, they are disposed by this common judgment.

2. The relevant common and different facts may be recounted at the outset. In Special Civil Applications No.1024 of 2001 and 1343 of 2001, the respondent-Bank is Dena Bank and the petitioners had applied for voluntary retirement under the Dena Bank Voluntary Retirement Scheme-2000. The applications for voluntary retirement under that scheme were required to be submitted between 15.1.2001 and 31.1.2001. In Special Civil Application No.1024 of 2001, after making the application on 17.1.2001, the petitioner submitted on 24.1.2001 a letter withdrawing his application for voluntary retirement and again wrote a letter dated 30.1.2001. Before the Bank could communicate its decision accepting the application on 14.2.2001, the petitioner obtained an interim injunction directing the bank to maintain status quo and he continues to serve under the interim orders till now.

2.1. I n Special Civil Application No.1343 of 2001, the petitioner applied for voluntary retirement on 22.1.2001 allegedly under the threat of transfer and he withdrew the application by letter dated 30.1.2001. However, according to the Bank's letter dated 20.2.2001, the petitioner's application was accepted and he was sought to be relieved with effect from 28.2.2001 and in fact relieved after the initial order of interim relief granted on 28.2.2001 by this Court expired.

2.2 In both the cases, the Bank relied upon its Circular No.388/62/2001 dated 6.1.2001, to which Annexure-A is the Voluntary Retirement Scheme-2000 (VRS). According to that Circular, the Board of Directors of the Bank had approved amendment to Regulation 28 of the Dena Bank (Employees) Pension Regulations-1995 in terms of the proposed regulation as under:

"28. Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements. Provided that, pension shall also be granted to an employee who opts to retire before attaining the

age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framted for the purpose by the Bank's Board with the concurrence of the Government."

The above amendment was expressly intended to allow pro rata pension to the employees who opt for voluntary retirement.

2.3 Clause 8 of the Circular states that:

"8. As Dena Bank Voluntary Retirement Scheme-2000 is voluntary, it shall not be negotiable and shall not be deemed or construed as a subject-matter of right or contract of service. It will not be a subject-matter of any Industrial Dispute under the provisions of the Industrial Disputes Act, 1947 and shall not be cited as a precedent, custom, convention, usage or practice anytime in future."

2.4 The Bank heavily relied upon Clause 8 of the Scheme, which reads as under:

"8. Effective Date:- The scheme will be effective from 15.1.2001 to 31.1.2001 and can be withdrawn at the discretion of the Bank at any time without assigning any reason. The Bank also reserves the right to alter and/or amend the above conditions of the scheme. The applications made under the Scheme will be irrecovable and the employee will not have the right to withdraws the application once submitted."

3. In Special Civil Application No.10164 of 2001, the respondent is Bank of Baroda and its VRS provided for withdrawal of applications upto 14.2.2001, which was also the last date for making the application. The petitioner applied on 19.1.2001 and sought to withdraw the same on 20.2.2001, six days after the last date for withdrawal. After rejecting the request for withdrawal vide letter dated 24.1.2001, the Bank addressed a communication dated 16.3.2001 accepting the application for VRS. The petitioner moved this Court by way of Special Civil Application No.2250 of 2001 and obtained ad-interim relief before being relieved on 30.3.2001. Upon that petition being finally heard, this Court (Coram: P.B.Majmudar, J.), on 27.7.2001, directed the petitioner to make a representation on or before 7.8.2001, upon which the Chairman and Managing Director of the Bank was

required to take appropriate decision preferably by 31.10.2001. The bank rejected the representation by its elaborate letter dated 13.10.2001 mainly on the ground that the application for withdrawal was late by six days and, therefore, the Bank's action in rejecting the request for withdrawal was in order. Being aggrieved by that order, the petitioner has again approached this Court and he survives in the service by virtue of the interim orders.

3.1 The respondent-Bank sought to rely upon the non-withdrawal clause in the scheme, since withdrawal was permitted upto closing of the scheme, i.e. 14.2.2001, but not thereafter. The relevant Clause 8 under the "Salient Features of BOBEVRS-2001" reads as under:

> "8. Withdrawal of application: An employee may withdraw, in writing, his application for voluntary retirement any time before close of branch/office hours on 14th February 2001. Request for withdrawal received after 14th February 2001 shall not be entertained."

4. It is the common ground that VRS were floated with the objectives of ensuring efficiency and controlling operational costs by optimum utilization of human resources at various levels in keeping with the business strategies, skill profile and requirements of the bank. In fact, the Government of India, Ministry of Finance (Banking Division) appears to have advised all the nationalised banks vide their letter dated 22.5.2000 to carry out the man-power planning in order to adopt the measures to have optimum human resources at various levels in keeping with the business strategy as per the requirements of each bank. In simple terms, it was an attempt at downsizing the stength of the staff and pruning avoidable recurring expenditure in tune with the requirements of the bank as a commercial enterprise. It could, however, not be disputed on the one hand that the service of the employees of the respondent was covered by statutory rules and constitutional guarantees as banks were "authorities" within the meaning of Article 12 of the Constitution and, on the other, that the schemes of voluntary retirement had no statutory force. It also could not be gainsaid that the schemes in question were not in substitution of any other scheme or provisions for voluntary retirement, but they and the applications made thereunder were, at best or worst, offers and their acceptance by the parties, within the realm of the law of contract.

5. The learned counsel for the petitioners assailed the scheme on the ground that absence of provisions for withdrawal of the application, or presence of such provision for withdrawal as was illusory due to the date for withdrawal closing with the closure of the scheme were utterly unreasonable and robbed the applicants of their right to withdraw what were, for all intent and purposes, their resignations or offers to retire. They vehemently relied upon and emphasised the petitioner's legal right to withdraw his resignation or offer before it was accepted or acted upon. The scheme itself was assailed for being unilateral and totally one-sided insofar as it irrevocably bound the applicants while leaving absolute discretion to the Bank to accept or reject the applications made thereunder. It was also argued that even assuming the whole scheme to be fair and legal, the management of the Bank was obliged to exercise their power of accepting or rejecting the applications in a rational and reasonable manner, particularly when the fundamental right to livelihood of the applicants, enshrined in the Constitution, was at stake. Adopting the analogy of ordinary resignations, it was submitted that in view of withdrawal of the applications before the same being accepted, it was illegal, unfair, irrational and unreasonable to thrust retirement upon the applicants. The learned counsel also dwelt upon the humanitarian aspect of the matter by citing the circumstances and hardships faced by the applicants in view of which they ought to be allowed to continue in service without any significant loss to the banks.

6. The learned counsel for the banks emphasised with equal vehemence the attractive benefits offered to the applicants, the voluntary nature of the applications, the enormous efforts involved in screening the applications, the sanctity of the conditions of the VRS and the inequity involved if exceptions were to be made in individual cases. Elaborating the stand of the banks, it was submitted that, if the terms and conditions of the schemes were to be individually examined and meddled with, the whole scheme would become unworkable and the essential purpose for which it was floated would be defeated. It was argued that, as it is actually happening, the sanctity of the bar against withdrawing the application would be called into question even by the applicants who had accepted the benefits under the scheme and the altered and settled position of the parties shall be sought to be unsettled by judicial intervention. It was, on the basis of factual data, submitted that, excepting exceptional cases, all applications fulfilling the conditions under the VRS were accepted and no

exceptions, on any of the grounds agitated in these petitions, were made by the banks.

7. A very recent unreported judgment of Division Bench of the Punjab & Haryana High Court pronounced on 3.4.2002 in C.W.P. No.4647 of 2001 etc. in Mohinder Pal Singh v. Punjab & Sind Bank etc. dealing with the same issues and arising from the same type of scheme was obtained for perusal. In similar set of facts, but the challenge being to the validity of VRS itself, it is held by that Court that VRS was not a valid piece of subordinate legislation inasmuch as the provisions of Section 19, sub-clause (1) and sub-clause (4) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 were not complied with and the scheme itself was, therefore, set aside. Even assuming the scheme to be valid, it is held to be open to an employee to withdraw his option before the same was accepted and effectively enforced. After an elaborate examination of the relevant legal provisions, the petitions are mainly allowed on the ground that an employee retained the right to withdraw his offer and that the object of the scheme was also hit by the provisions of Section 23 of the Contract Act. That Court has taken the view that in order to constitute a valid contract, there has to be meeting of the minds and unilateral conditions cannot be imposed in an invitation to offer. It is observed that the scheme intimated vide a circular was an invitation to make offer in the form of an application and the applications were unilateral offers pursuant to the invitation with an undertaking that the offer was irrevocable. But an offer can always be withdrawn before it was accepted or acted upon. Equating the applications under the VRS with resignation, since the effect was the same, i.e. cessation of contract of service, it is held to be always open to withdraw the same before it was accepted. It is also held that the clause of the scheme restricting the option to withdraw the application was against the general law and gave an arbitrary power to the bank when it retained absolute power to reject the application. Thus, that clause was also held to be lacking in mutuality.

8. After studying the above judgment and commenting upon the same, the learned counsel for the banks submitted that the legality and validity of the whole scheme as such was not called into question by the petitioners in the cases on hand. As for the contractual obligations of the parties, the operation of the scheme was clearly divisible in two parts, viz. making of an application and acceptance of the same. The scheme as a

whole was in the nature of not an offer but an invitation to make an offer to voluntarily retire against the attractive benefits held out by the bank. No sooner the applicants, conscious of and undertaking that the same was irrevocable, immediately or after certain date, submitted an application, the first part of the contract was concluded and the bank was obliged to consider such application but its acceptance remaining in the absolute discretion of the bank by virtue of the stipulation in that behalf. It was also submitted that apart from the conclusion of the first part of the agreement, the agreement being not to withdraw the application, the applicant was otherwise also estopped from withdrawing the same, he having understood and accepted the condition and stipulation under which the application was submitted. It was contended, without prejudice to the above submissions that the right, if any, to withdraw the application in the form of a proposal, if it were so, ought to be construed to have been waived by his having held out the solemn promise in writing that the application shall not be withdrawn.

9. Within the parameters, delineated by the submissions of the learned counsel, the resolution of the controversies will depend upon decision on the following issues:

A] whether the application under the VRS can be equated with an ordinary resignation or an application for voluntary retirement under the statutory regulation, or is it an offer and acceptance thereof as a package purely in the realm of contract ?

B] whether the employee retained his right to withdraw his application, despite the condition of non-withdrawal being a part of the package and the procedure accepted by and in the making of the application ?

C] Whether the banks acted arbitrarily or unreasonably in the exercise of its discretion by accepting the applications which were sought to be withdrawn before being accepted ?

10. Taking up the first two issues, it can be seen that although in all the three instances of an ordinary resignation, voluntary retirement under the regulations or under the VRS, the service is terminated at the instance of the employee, the package and procedure are altogether different. The law on the subject of

resignation and voluntary retirement is well-settled, particularly by the ratio in BAL RAM GUPTA [1987 (Supp) SCC 228] which is consistently followed and affirmed so far. The right to withdraw resignation or an application for voluntary retirement before the same being accepted and acted upon is recognized as substantive right of a public servant. However, in the case of an application under VRS, it can be argued that that right was bartered with the job against an attractive offer of a package which would otherwise be not available under any law. It was also in fact argued, with support of several judgments, that the condition of irrevocability of the application was part of a binding and concluded contract, that right to withdraw the application stood waived and that the applicant was otherwise estopped from resiling after holding a promise that he would not withdraw the application.

11. The elaborate arguments and the interesting issues as to whether and at which point of time a binding contract came into being between the parties, whether the applicant's option to withdraw the application stood waived and whether the applicant was estopped from resiling became academic and, therefore, they are not dealt with in detail, in view of the recent judgment of the Supreme Court in SHAMBHU MORARI SINHA v. PROJECT & DEVELOPMENT INDIA and ANOTHER reported in [(2000) 5 SCC 621]. In that case of an application under the voluntary retirement scheme, application was submitted on 18.10.1995, it was accepted on 30.7.1997, the application was sought to be withdrawn on 7.8.1997 and the applicant had continued in service till 26.9.1997, and the Supreme Court decided as under:

> "The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by three decisions, namely, BAL RAM GUPTA v. UNION OF INDIA, J.N.SRIVASTAVA v. UNION OF INDIA and POWER FINANCE CORPORATION LTD. v. PRAMOD KUMAR BHATIA, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date. That being so, the appeal is allowed."

Thus, the application under Voluntary Retirement Scheme has been equated with resignation by the Apex Court.

11.1 The above judgment was taken in review and in the

same case reported in (2000) 3 SCC 437, another Bench of the Apex Court, after noticing absence of any condition prohibiting withdrawal of application for voluntary retirement, again upheld the right of the appellant to withdraw his option even after its acceptance but before the actual date of release from the employment. Thus, the latter judgment in SHAMBHU MORARI SINHA (supra) clarifies that the condition prohibiting withdrawal of application was not found in the scheme, but affirmed that applicant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employee and employer came to an end.

12. Earlier, in the case of DEVI KRISHAN GOYAL v. DISTRICT INSPECTOR OF SCHOOLS reported in JUDGMENT TODAY 1988 (4) SC 201, wherein an option to retire, which was final under the Rules, was held to be capable of withdrawal before it was accepted. It was held that the provision in the Rule that "an option once used will be deemed to be final" would not mean that when an offer is

made, it is not open to be withdrawn before it is accepted. Thus, by a long line of judgments, it is repeatedly held, in effect, that even as a purely contractual matter, an application to voluntarily retire is an offer and can always be withdrawn before being accepted.

13. The learned counsel for the banks relied upon a Division Bench judgment of the Himachal Pradesh High Court in JEET RAM v. H.P.STATE HANDICRAFTS AND HANDLOOM CORPORATION LTD. [1998 III LLJ (Supp) 772], wherein the option to come under the VRS, once exercised, was held to be final and the employee was held to have no right to withdraw. In the facts of that case also, however, the employee had sought to withdraw after his application was accepted. Although the petition for special leave to appeal from that judgment is reported to have been summarily dismissed by the Supreme Court, that judgment stands on a different factual footing of an attempt to withdraw aftr acceptance.

14. In the facts of the present cases, the schemes provide for absolute discretion to the bank to accept or decline any application. The VRS in the case of Dena Bank, by its Clause 10.13, reserves the right to withdraw the whole scheme at any time it thinks fit and its decision in that respect would be final. The prescribed application form under the scheme, inter alia, stipulates as under:

"PART-II.

1. xxx xxx xxx

2. I am aware that the acceptance or rejection of my request for voluntary retirement under Dena Bank VRS, 2000 is at the absolute discretion of the bank;

3. I am aware that no voluntary retirement under Dena Bank VRS, 2000 shall be deemed to have come into effect unless the decision of the competent authority as to the acceptance of the request for voluntary retirement has been communicated in writing and I have been relieved from my duties to the satisfaction of the bank.

4. xxx xxx xxx

5. xxx xxx xxx

6. xxx xxx xxx

7. I agree that Bank has right to modify, amend or cancel any or all the clauses of the scheme and to give effect thereto from any date bank may deem fit."

In the case of VRS of Bank of Baroda, by its Clause 15, an application for voluntary retirement shall have no effect unless it is accepted and communicated to the employee in writing by the competent authority.

14.1 It is clear from the above stipulations that the offer to retire and the promises to abide by the conditions of VRS are in the form of proposals which can take effect only upon acceptance of the same. And, as the bank kept absolute discretion not to accept or grant the application for voluntary retirement and even the option of withdrawing the whole scheme, it can, in equity, hardly hold the applicant to be bound by the terms of the scheme by virtue of the proposal which was withdrawn and yet to be accepted to transform the whole scheme into a set of stipulations of a binding contract.

15. The ratio of the judgment in MANJUSHREE PATHAK v. ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD. [(2000) 7 SCC 390] was relied upon by the petitioners in support of the proposition that, in case of similar clause and scheme where the management had discretion to accept or reject the request for voluntary retirement, the employer

being an authority within the purview of Article 12 of the Constitution, could not abdicate its duty to act reasonably, fairly and judiciously in exercise of the discretion. The judgment of the Apex Court in UNION OF INDIA v. WING COMMANDER T. PARTHASARATHY [AIR 2001 SC 158] was relied upon to submit that even a written certificate to the effect that employee cannot seek cancellation of his application for premature retirement could not deprive him of his substantive right in absence of any statutory provision, rule or regulation. Therefore, it can be concluded that, even assuming there to be a promise not to withdraw and assuming that to have been accepted by considering the application, the banks were still under an obligation to act reasonably and judiciously when it came to taking away the right to withdraw the whole proposal made in the form of making the application.

16. Thus, in any view of the matter and respectfully following the ratio of the judgments discussed hereinabove, it is held that the petitioners retained the right to withdraw their applications under the Voluntary Retirement Scheme of the respondent banks before such applications were accepted and they having admittedly done so, the petitions have to be allowed.

16.1 Accordingly, Rule is made absolute in Special Civil Application No.1024 of 2001 with no order as to costs. The application of the petitioner dated 17.1.2001 made under VRS-2000 shall stand withdrawn and the acceptance thereof by the respondent-bank is hereby set aside.

16.2 In Special Civil Application No.1343 of 2001, since the petitioner is stated to have been relieved, the respondents are directed to reinstate him on his original post with full wages and continuity of service on condition of the petitioner paying the amount paid to him under the VR Scheme with interest @ 9% from the date of payment till the date of repayment by 25.7.2002. Rule is made absolute accordingly with no order as to costs.

16.3 And, in Special Civil Application No.10164 of 2001, the application dated 19.1.2001 of the petitioner for voluntary retirement under the `BOBVRS-2001' Scheme shall stand withdrawn and the order dated 16.3.2001 of the bank accepting the application is hereby set aside. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)